



SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245-AH92

Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its business loan program regulations to lift the moratorium on licensing new Small Business Lending Companies (SBLCs) and add a new type of lending entity called a Community Advantage SBLC. SBA is also removing the requirement for a Loan Authorization in the 7(a) and 504 Loan Programs.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205-3645 or Dianna.Seaborn@sba.gov. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to “aid, counsel, assist, and protect... the interests of small business concerns in order to preserve free competitive enterprise... and to maintain and strengthen the overall economy of our nation.” 15 U.S.C. 631(a). SBA accomplishes this

mission, in part, through programs that bridge the financing gap in the private market. One such program is the 7(a) Loan Program authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)), which supports our nation's economy by providing SBA-guaranteed loans to small businesses that lack adequate access to capital on reasonable terms and conditions.

Section 7(a)(17) of the Small Business Act states that SBA shall authorize lending institutions and other entities, in addition to banks, to make 7(a) loans. To this end, SBA has authorized Small Business Lending Companies (SBLCs) as defined in 13 CFR 120.10 to participate in the 7(a) Loan Program. SBLCs are non-depository lending institutions authorized by SBA only to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. Under current regulations, SBLCs may not be affiliated with another SBA Lender, including 7(a) Lenders or Certified Development Companies (CDCs) that participate in SBA's CDC/504 Loan Program. SBLCs are subject to all regulations pertaining to 7(a) loans and Loan Program Requirements (as defined in 13 CFR 120.10) regarding origination, servicing, and liquidation. Unlike the majority of 7(a) Lenders, which are Federally-regulated depository institutions, SBLCs are regulated, supervised, and examined solely by SBA. As SBA-regulated entities, SBLCs are subject to specific regulations and policies regarding formation, capitalization, and enforcement actions.

On August 17, 1981, SBA published a proposed rule (46 FR 41523) to, among other things, impose a moratorium on licensing new SBLCs. Subsequently, on January 4, 1982, SBA published a final rule (47 FR 9) repealing its authority to approve additional SBLCs as participating lenders. Since then, the number of SBLC Licenses has remained unchanged at 14. To become an SBLC under current regulations, an entity must acquire one of the existing 14 SBLC Licenses from an entity that is willing to sell its SBLC License and exit the 7(a) Loan Program.

On February 18, 2011, SBA created the Community Advantage (CA) Pilot Program to provide 7(a) loans in underserved markets through mission-oriented lenders focused on economic development (76 FR 9626). SBA waived the moratorium on the licensing of new SBLCs to allow organizations that met the definition of an SBLC but that did not have an SBLC License to participate in the CA Pilot Program as CA Lenders. The CA Pilot Program was recently extended until September 30, 2024 (87 FR 19165). SBA is also removing the requirement for a Loan Authorization and will instead rely on the use of the terms and conditions of the loan application as submitted by the SBA Lender into E-Tran. These terms and conditions will reflect the agreement between the Borrower, the SBA Lender and SBA providing the terms and conditions under which SBA will guarantee a business loan to the Borrower, subject to the Lender's compliance with all applicable Loan Program Requirements.

On November 7, 2022, SBA published a notice of proposed rulemaking with a request for comments in the *Federal Register* to lift the moratorium on licensing new SBLCs, to add a new type of entity called a Mission-Based SBLC, and to remove the requirement for a Loan Authorization. 87 FR 66963 (November 7, 2022). This final rule implements the proposed revisions put forth for public comment in the November 7, 2022 proposed rule, amended as indicated below.

II. Summary of Comments

SBA received 169 comments on the proposed rule. Of these, 11 comments were submitted by trade groups and 85 comments were received from lenders, nonprofit organizations, or individuals. The remaining 73 comments were submitted anonymously.

SBA received comments from six trade groups, six lenders or employees of lenders, and two comments from individuals or businesses objecting to the confluence of the proposed changes in the notice of proposed rulemaking in the *Federal Register* (87 FR 64724 October 26, 2022) to streamline and modernize the 7(a) Loan Program and 504

Loan Program regulations (Affiliation Proposed Rule), the notice of proposed rulemaking published in the *Federal Register* (87 FR 66964 November 7, 2022) to lift the moratorium on licensing new SBLCs, to add a new type of entity called a Mission-Based SBLC, and to remove the requirement for a Loan Authorization (SBLC Proposed Rule), and SBA's announcement of a revision to the Standard Operating Procedures (SOP) 5010, Lender and Development Company Loan Programs. The comments stated the confluence of these revisions are problematic as proposed because SBA would immediately invite additional non-federally regulated entities to participate as 7(a) Lenders without first testing whether the streamlining of provisions such as lending criteria and hazard insurance will have an adverse effect on SBA's loan portfolio. One trade group requested that the Administrator temporarily withdraw both proposed rules.

Comments on SBLC Changes:

SBA received 119 comments on SBA's proposal to remove the moratorium on licensing new SBLCs and create a new type of SBLC called a Mission-Based SBLC. As discussed in the section-by-section analysis below, SBA has determined that the new name for mission-based SBLCs will be Community Advantage SBLCs. Thirteen comments expressed support and 106 comments expressed opposition or suggested modifications to SBA's proposed amendments. The comments covered a range of topics that can be grouped into 9 topics.

Comments topic 1.

Comments stated the proposed rules do not adequately address how current CA Lenders would transition into becoming Community Advantage SBLCs. On [INSERT DATE 29 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], as determined by the Administration, SBA will grandfather current CA Lenders in accordance with section 120.420(e) that participated in the CA Pilot Program to be licensed as 7(a) Community Advantage SBLCs.

Some comments pointed out that current CA Lenders may operate on a for-profit basis, which is incompatible with SBA's proposal that new Community Advantage SBLCs operate as nonprofit organizations. This and other comments regarding CA Lenders are addressed in the section-by-section analysis below.

Comments topic 2.

Comments stated that licensing additional regular SBLCs and new Community Advantage SBLCs will increase risk to SBA that will in turn increase subsidy costs to SBA and will negatively impact SBA lenders and borrowers, perhaps in the form of higher fees to lenders and borrowers or lower program authority. Some comments speculated that new SBLC licenses may be awarded to financial technology (fintech) lenders and point to reports that in the Paycheck Protection Program (PPP), some fintech lenders were associated with fraud. However, SBLCs are defined as non-depository lending institutions, which is not synonymous with the term fintech. SBA has for many years provided oversight to non-depository entities participating in the SBA business loan programs. This includes SBLCs, non-federally regulated lenders (NFRLs), 504 Certified Development Companies (CDCs), and Microloan Intermediaries. In fact, most all lending institutions incorporate the use of financial technology in their delivery of loans and other financial products. SBA received comments supporting the proposed revisions with these comments stating that PPP lending has different statutory requirements that were enacted in response to an immediate need for capital to prevent a collapse of the small business economy during a worldwide pandemic, and that it is not a fair comparison to equate fraud in PPP with potential fraud in the regular 7(a) loan program, which has well-established and robust operating policies and procedures that have proven successful at protecting the integrity of the program.

Comments topic 3.

Comments expressed concern that SBA will not be able to adequately provide oversight and servicing for SBA lenders. As SBA discussed at length in the proposed rule, SBA conducted in depth assessments to ensure it has capacity to provide oversight and servicing to SBA's entire portfolio of lenders, including any potential additional SBLCs. As a result of these assessments, SBA stated in the proposed rule that it will license, service, and provide oversight to three new regular SBLCs. It should be noted that since January 1982 when SBA imposed the moratorium on licensing new SBLCs, that there have been more than 60 different holders of the 14 authorized SBLC licenses. SBA has successfully overseen transition and operation of various organizational structures of SBLC entities.

Comments topic 4.

Comments allege that the proposed revisions will not increase lending to underserved markets because SBA is not proposing to impose any lending requirements to underserved markets on regular SBLCs, and because SBA has been too vague as to how it will define and identify capital market gaps for new Community Advantage SBLCs. However, SBA received several comments in support of licensing new nonbank lenders, with some of these comments stating that non-bank lenders offer a more flexible and alternative avenue to capital compared to traditional banking institutions, and that these lenders mainly focus on smaller loan amounts that are not considered a priority in the traditional banking system. One comment in support of the proposed revisions referenced a recent working paper published by the Federal Reserve Bank of Philadelphia that presents preliminary research being circulated for discussion purposes that states that fintech small business lending platforms made loans in more zip codes with higher business bankruptcy filings and higher unemployment rates. Fintech platforms' internal credit scores were able to predict future loan performance more accurately than the traditional approach to credit scoring. Overall, the research found that fintech lenders

have a potential to create a more inclusive financial system, allowing small businesses that were less likely to receive credit through traditional lenders to access credit and to do so at lower cost.¹ SBA's history with the CA Pilot Program indicates that as Community Advantage SBLCs these CA lenders will continue to commit resources to reaching communities with capital market gaps.

Comments topic 5.

Comments expressed concern that the proposed revisions will create an uneven playing field between federally regulated lenders and SBLCs/ Community Advantage SBLCs. The comments focus on the idea that federally regulated lenders are held to a higher standard by their federal regulators than SBA imposes on SBLCs. However, SBA has and will continue to require that SBA Supervised Lenders and CDCs, including SBLCs and Community Advantage SBLCs, submit their credit policies for review by SBA as part of the application to become an SBA Lender. SBA seeks to ensure that each lender authorized to participate in the program has policies that demonstrate reasonable and prudent credit standards that adequately address SBA's Loan Program Requirements. SBA also reviews lender credit policies during lender oversight and when lenders propose changes to their policies or practices in accordance with Loan Program Requirements as defined in 13 CFR 120.10. Further, SBA Supervised Lenders must use the approved policies and procedures to satisfy underwriting criteria for similarly-sized, non-SBA guaranteed commercial loans, where reference is made in Loan Program Requirements.

Comments topic 6.

¹ Federal Reserve Bank of Philadelphia Working Papers, Cornelli, G, Frost, J., Gambacorta, L., Jagtiani, J., April 21, 2022, "The Impact of Fintech Lending on Credit Access for U.S. Small Businesses" at <https://www.philadelphiafed.org/the-economy/banking-and-financial-markets/the-impact-of-fintech-lending-on-credit-access-for-us-small-businesses>.

Comments expressed concern over the proposed capital requirements for Community Advantage SBLCs. Some comments stated that SBA should set a minimum threshold for capitalization of all Community Advantage SBLCs. However, as SBA indicated in the proposed rule, SBA will examine each lender applicant on an individual basis to determine the capital requirements best suited to minimize risk while not burdening smaller lenders with unnecessarily large capital requirements. However, SBA agrees that further steps should be taken to address risk mitigation for Community Advantage SBLCs. SBA will require Community Advantage SBLCs to maintain a loan loss reserve account as discussed more fully in the section-by-section analysis below for section 120.471.

Additionally, regarding SBA's proposal to set minimum lender capital amounts at the discretion of the Administrator in consultation with SBA's Associate Administrator for SBA's Office of Capital Access (AA/OCA), SBA received comments expressing concern that placing the decision at the level of political appointees may lead to the politicization of the program. SBA disagrees with this concern because political appointees determine the Agency's goals and direction, and across the federal government, political appointees have the authority to make and review final determinations as informed by career employees. In response, the final rule expands the decision-making authority in this case so that the Administrator and the AA/OCA may delegate their decision-making authority to designees.

Comments topic 7.

Comments challenged SBA's assumptions in the proposed rule. A trade group requested that SBA provide information regarding how it determined that allowing decisions regarding the determination of capital requirements for Community Advantage SBLCs to be made on a case-by-case basis is consistent with existing statute. Section 23 of the Small Business Act, Supervisory and Enforcement Authority for Small Business

Lending Companies, requires the SBA Administrator to, among other things, “issue regulations outlining the conditions under which the Administrator may determine the level of capital ...” That language clearly allows the Administrator the discretion to establish the “conditions under which” the required level of capital would be determined for SBLCs. SBA is abiding by this statutory requirement through this rulemaking in revisions to § 120.471.

Some comments challenged the assumptions made in the proposed rule, doubting SBA’s estimates that a newly licensed SBLC would make 425 loans over the next 4 years because the commenters believe it likely that some or all of the new regular SBLCs would be fintechs that may have the capacity to approve a significantly higher number of loans than is estimated. SBA stands by its estimate that a new SBLC has the potential to increase 7(a) lending by approximately 425 loans per year over the next four years, because the estimate was derived from actual historical performance of new SBA 7(a) Lenders over a four-year period of fiscal years 2018 through 2022.

Comments topic 8.

Comments stated the proposed rule was too vague or did not provide enough information. For example, commenters stated that SBA should publish the application and evaluation processes for new applicants for SBLC licenses in the regulations. SBA disagrees with this approach because it would be overly restrictive. Instead, the proposed approach allows SBA the flexibility to respond to unique challenges such as pandemics, recessions, issues faced by specific industry sectors, etc.

Comments topic 9.

Comments expressed concern that existing SBLCs will be devalued by the licensing of new SBLCs/ Community Advantage SBLCs. However, SBA also received comments in support of expanding the number of SBLCs. These comments pointed out that by imposing a moratorium on licensing new SBLCs and by restricting the total

number of SBLCs to 14 for the last 40 years, SBA has created an oligopoly over the \$36 billion a year lending market for the existing SBLCs, which unfairly restricts competition. These comments point out that expanding the number of SBLC licenses will increase competition and encourage innovation, which benefits the small business.

Comments on Removing the definition of “Authorization”:

SBA received 80 comments on removing the definition of Authorization and removing reference to an Authorization from its regulations. The comments were nearly universally opposed to removing the word Authorization, with three comments supporting the proposal and the rest opposing the proposal or requesting modifications. Most comments that opposed the proposal expressed the concern that the Authorization is the document that clearly defines the agreement between the lender and SBA for each transaction and is beneficial in communicating requirements to the borrower, lenders, and SBA. Other comments stated the Authorization serves as a reference document for the life of the loan. Some comments stated borrowers will not know the terms they are agreeing to without an Authorization. Several comments stated that lenders rely on the Authorization as a template or checklist to ensure the lender’s compliance with Loan Program Requirements, with one comment stating the Authorization is the gold standard for commercial lending. Several comments stated the Authorization is a roadmap for all closing processes and should not be eliminated without a cohesive and comprehensive replacement. Many comments suggested that if SBA eliminates the Authorization, SBA should develop an alternative document that serves the same purpose but is easier to use. However, as explained in the proposed rule, although SBA is eliminating the word Authorization as a defined term in its regulations, SBA will continue to require and provide a means for memorializing each loan’s terms and conditions and will provide further guidance for the procedures of providing the loan terms and conditions to SBA in Loan Program Requirements. In practice, SBA’s E-Tran system currently enables users

to download a printable document with corresponding fields executed by the lender, including uses of proceeds and collateral. This rule finalizes the proposed changes to remove the word Authorization from SBA's regulations will enable SBA to eliminate duplication of data entry and will save lenders and SBA time. For the reasons stated above, SBA is moving forward as proposed.

III. Section-by-Section Analysis

SBLC Moratorium Recission

Section 120.10 – Definitions

SBA has determined that certain markets where there are capital market gaps continue to struggle to obtain financing on non-predatory terms. Therefore, SBA is lifting the moratorium on licensing new Small Business Lending Companies (SBLC) and creating a new type of SBLC to help bridge this financing gap.

SBA proposed to add a new definition for Mission-Based SBLC as a specific type of SBLC that is a nonprofit organization that will be licensed to make 7(a) loans. SBA proposed to call this new type of SBLC a Mission-Based SBLC; however as discussed below, SBA will instead call this new type of SBLC a Community Advantage SBLC.

SBA believes Community Advantage SBLCs will increase access to capital in their respective communities. SBA proposed Community Advantage SBLCs to be nonprofit entities because nonprofit lending organizations often serve communities with capital market gaps SBA intends to fill. Adding Community Advantage SBLCs to the possible types of 7(a) Lenders will also allow existing CA Lenders an opportunity to participate in the 7(a) Loan Program on a non-temporary basis as a Community Advantage SBLC while continuing to meet the needs of underserved communities. When SBA authorizes an additional Community Advantage SBLC License to a CA Lender, the CA Lender will transition from making 7(a) loans in a temporary pilot program to instead making loans under the 7(a) loan program without an expiration date associated with

their participation. SBA received many comments that SBA should make the CA Pilot Program permanent. However, the nature of a pilot program is that it is a temporary program. SBA will instead provide a process to allow current CA Lenders to transition into Community Advantage SBLCs. Such guidance will be set forth in upcoming Loan Program Requirements. SBA determined that CA Lenders were a potential group of lenders already making loans in underserved markets, that would be able to meet the purpose of mission-based SBLCs, therefore SBA will refer to the new type of SBLCs as Community Advantage SBLCs rather than Mission-Based SBLCs.

To accomplish the goal of expanding capital opportunities and allowing Community Advantage SBLCs and regular SBLCs to increase the availability of 7(a) loans to small businesses, SBA will remove the moratorium on licensing new SBLCs. Current section 120.10 definition of Small Business Lending Company (SBLC) states that SBA has imposed a moratorium on licensing new SBLCs since January 1982, and the number of licenses for SBLCs has remained at 14 ever since. SBA is finalizing the proposed definition to remove the statement that SBA has imposed a moratorium on licensing new SBLCs. Not only will this allow SBA to license Community Advantage SBLCs, but it will allow SBA to increase the number of regular SBLCs as well. SBA plans to issue notices in the *Federal Register* with information regarding the SBLC license application processes.

Section 120.466 – SBA Supervised Lender application

Current section 120.466, paragraph (a)(6), states that in connection with any application to become an SBLC, the applicant must include a letter agreement from the existing SBLC stating that the SBLC is seeking to transfer its lending authority. SBA proposed to revise this section because the lifting of the moratorium on new SBLC Licenses will no longer require that an applicant show that an existing lender is transferring its authority. However, as SBA proposed to accept applications for new

SBLCs from time to time in section 120.10, there may be periods when new SBLC Licenses are not being issued and existing Licenses will be acquired and transferred. Therefore, SBA proposed to revise this section to state that an applicant to become an SBLC must show a letter agreement from an existing SBLC if it is acquiring an existing License. For the reasons stated above, SBA is moving forward as proposed.

Section 120.470 – What are SBA’s additional requirements for SBLCs?

SBA proposed to revise § 120.470 to reference and include additional requirements for Community Advantage SBLCs. As a type of SBLC, except where otherwise explicitly mentioned in regulations, all requirements imposed on SBLCs and SBA Supervised Lenders will apply to Community Advantage SBLCs as well.

Several comments said that the existing requirement in paragraph (a) that states an SBLC may only make 7(a) loans or loans to Intermediaries is unnecessarily restrictive and is incompatible with the business models of some current CA lenders that are Community Development Financial Institutions (CDFI) or SBA CDCs. They further commented that this would also prevent such entities from applying in the future to become an SBLC or a Community Advantage SBLC because those entities may also conduct other business activities, including loanmaking. SBA agrees with this concern and will revise paragraph (a) by removing the word “only” to make it clear that SBLCs and Community Advantage SBLCs may participate in other lines of business in addition to 7(a) lending or making loans to Intermediaries.

SBA proposed to revise paragraph (b) to require Community Advantage SBLCs to be nonprofit organizations without imposing similar requirements on regular SBLCs. As discussed above, some comments expressed concern that current CA Lenders may operate on a for-profit basis. Any Community Advantage Pilot Program lender will be permitted to hold a Community Advantage SBLC license regardless of their profit or nonprofit structure. New Community Advantage SBLC applicants that did not

participate as a Community Advantage Pilot Program lender are required to have nonprofit status to qualify.

SBA received multiple comments regarding the costs that lending entities may encounter when they become Community Advantage SBLCs. SBA agrees with these concerns, and in an effort to reduce some ongoing costs for these lenders, SBA will revise the requirement at paragraph (e) for fidelity insurance. The current requirement for fidelity insurance is that an SBLC must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of \$2,000,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304-9308. SBA has determined this requirement may be overly burdensome for Community Advantage SBLCs to bear; therefore, SBA will provide an exception to this requirement to state that SBA's Administrator, in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA) or their designee(s), at their discretion, will determine the appropriate coverage levels for Community Advantage SBLCs as published in Loan Program Requirements.

SBA also proposed to add a new paragraph (h) to describe the requirements Community Advantage SBLCs must meet. However, SBA has determined that it will not go forward with a new paragraph (h) as proposed and instead, SBA's Administrator, in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA) or their designee(s), at their discretion, will determine the specific market requirements, if any, that apply to Community Advantage SBLCs in Loan Program Requirements.

Section 120.471 – What are the minimum capital requirements for SBLCs?

Current § 120.471, paragraph (a)(1) addresses minimum capital requirements for SBLCs and states that beginning on January 4, 2024, each SBLC that makes or acquires a

7(a) loan must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least \$5,000,000, or 10 percent of the aggregate of its share of all outstanding loans, whichever is greater. SBA proposed to revise this paragraph by adding a new paragraph (a)(4) that will state that a Community Advantage SBLC must maintain a minimum amount of capital at the discretion of the Administrator, in consultation with SBA's Associate Administrator for SBA's Office of Capital Access (AA/OCA), or their designee(s) to ensure sufficient risk protection for SBA and lenders while not burdening smaller lenders with large capital requirements. This proposal allows SBA to license Community Advantage SBLCs that are nonprofit lenders when these entities would otherwise not be able to meet SBA's minimum capital requirements.

SBA received comments that SBA should consider requiring a minimum loan loss reserve requirement for Community Advantage SBLCs. Given SBA's determination to create flexibility in minimum capital requirements for lenders participating in the Community Advantage Pilot program, SBA agrees with these comments regarding loan loss reserves and will require Community Advantage SBLCs to maintain a loan loss reserve account as determined at the discretion of the Administrator, in consultation with SBA's Associate Administrator for SBA's Office of Capital Access (AA/OCA), or their designee(s) in Loan Program Requirements

Section 120.820 – CDC Affiliation.

Current section 120.820 limits the entities with which CDCs may be affiliated. SBA proposed to add a new paragraph (g), which states notwithstanding paragraphs (b), (c), and (e), a CDC may be affiliated with a Community Advantage SBLC. This revision will allow CDCs to form the required entity whose purpose is to make 7(a) loans as a Community Advantage SBLC. Additionally, SBA will provide language stating that CDCs that are also CA Lenders as of the effective date of this rule may be licensed as

Community Advantage SBLCs without having to form a separate entity to participate in 7(a) loanmaking.

Removal of Requirement for Loan Authorization

Section 120.10 – Definitions

SBA proposed to remove the regulatory definition for Authorization. SBA will continue to rely on the SBA Form 750, which is a written agreement executed by all participating lenders requiring that those same lenders comply with all statutes and regulations. The removal of the regulatory definition for Authorization will not change SBA's ongoing practice of providing specific written instructions regarding documentation of an SBA loan's terms and conditions in SBA's Loan Program Requirements. For loan accounting purposes, SBA Lenders will continue, as they do today, to electronically submit their request for a loan guaranty authorization from the Agency's loan accounting system of record – E-Tran.

SBA proposed to amend the definition of Loan Instruments to remove the word Authorization. The amended definition will state that Loan Instruments are the note, instruments of hypothecation, and all other agreements and documents related to a loan.

SBA proposed to amend the definition of Loan Program Requirements or SBA Loan Program Requirements to remove the word Authorization. The amended definition will state that Loan Program Requirements or SBA Loan Program Requirements are requirements imposed upon Lenders, CDCs, or Intermediaries by statute; SBA and applicable government-wide regulations; any agreement the Lender, CDC, or Intermediary has executed with SBA or to which the Lender or CDC is subject; SBA Standard Operating Procedures (SOPs); Federal Register notices; and official SBA notices and forms applicable to the 7(a) Loan Program, 504 Loan Program or Microloan Program; as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is

defined in § 120.802. For Intermediaries, this term also includes requirements imposed by promissory notes, collateral documents, and grant agreements.

Section 120.120 – What are eligible uses of proceeds?

Current § 120.120 states that a small business must use an SBA business loan for sound business purposes, and the uses of proceeds are prescribed in each loan's Authorization. The section goes on to describe the various ways in which a borrower may use SBA loan proceeds. SBA proposes to amend this section to remove the sentence that states "The uses of proceeds are prescribed in each loan's Authorization." SBA already captures the uses of proceeds of the SBA-guaranteed loan through the loan application data and conditions the SBA Lender enters into ETRAN; therefore, it is not necessary to include the information in a separate Authorization. For the reasons stated above, SBA is moving forward with the rule as proposed.

Section 120.192 – Approval or denial.

Current section 120.192 states that Applicants receive notice of approval or denial by the Lender, CDC, Intermediary, or SBA, as appropriate. Notice of denial will include the reasons. If a loan is approved, an Authorization will be issued. SBA proposed to amend § 120.192 to remove the sentence that states "If a loan is approved, an Authorization will be issued." SBA's current practice is to review an Authorization and issue an SBA Loan Number when the Authorization is considered satisfactory to SBA. SBA considers the issuance of the loan number to indicate loan approval by SBA. The proposed rule to no longer require an Authorization will only slightly modify the current process. Under the proposed rule, SBA will indicate loan approval by issuing a loan number. For the reasons stated above, SBA is moving forward with the rule as proposed.

Section 120.220 – Fees that Lender pays SBA.

Section 120.220 states the requirements for the fees that 7(a) Loan Program Lenders pay SBA. The introductory text of § 120.220 states in part "Acceptance of the

guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement, or the loan authorization." For the reasons stated above, SBA proposed to remove the reference to the loan Authorization so that the sentence states "Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, or the guaranty agreement.

Current § 120.220(e) states in part "Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the [7(a)] Lender's misconduct or violation of any provision of this part, the guarantee agreement, the Authorization, or other loan documents." For the reasons stated above, SBA proposed to remove the reference to the loan Authorization so the revised § 120.220(e) will state "Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the [7(a)] Lender's misconduct or violation of any provision of this part, the guarantee agreement, or other loan documents. For the reasons stated above, SBA is moving forward with the rule as proposed.

Section 120.801 – How a 504 Project is financed.

Current § 120.801(a) applies to the 504 Loan Program and states "One or more small businesses may apply for 504 financing through a CDC serving the area where the 504 Project is located. SBA issues an Authorization if it agrees to guarantee part of the funding for a Project." For the reasons stated above, SBA proposed to remove the sentence that references the Authorization, and SBA is moving forward with the rule as proposed.

Section 120.842 – ALP Express Loans.

Current § 120.842(b)(4) states the requirements for submission of loan documents for 504 Loan Program ALP Express loans and states in part "If approved, SBA will

notify the ALP CDC of the loan number assigned to the loan and provide the CDC with a signed copy of the Loan Authorization.” SBA’s current practice is to review an Authorization and issue a loan number when the Authorization is considered satisfactory to SBA. Under the proposed rule, SBA will indicate loan approval by issuing a loan number. Therefore, SBA proposed to remove the reference to the Loan Authorization so the sentence will state “If approved, SBA will notify the ALP CDC of the loan number assigned to the loan.”

Current § 120.842(b)(5) states the requirements for loan and debenture closing for 504 Loan Program ALP Express loans and states “After receiving notification of the loan number from SBA, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.” For the reasons stated above, SBA proposed to remove the reference to the Loan Authorization so that section 120.842(b)(5) will state “After receiving notification of the loan number, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.” For the reasons stated above, SBA is moving forward with the rule as proposed.

Section 120.921 – Terms of Third Party Loans.

Current § 120.921(a) states the requirements for the loan maturity of the 504 Loan Program Third Party Lender loan. Section 120.921(a) provides that Third Party Loans have loan maturity requirements. A 504 loan for a 10 year loan term must have at least a 7 year Third Party Loan and similarly, a 504 loan for 20 years must have at least 10 years for the Third Party Loan. Additionally, overall loan maturities must be recalculated if there is more than one Third Party Loan. However, a balloon payment must be justified in the Loan Authorization. For the reasons stated above, SBA proposed to

remove the last sentence in section 120.921(a) in its entirety so that balloon payments need not be identified in the Loan Authorization. For the reasons stated above, SBA is moving forward with the rule as proposed.

Section 120.960 – Responsibility for closing.

Current § 120.960(c)(1) states that SBA may, within its sole discretion, decline to close a 504 Loan Program Debenture; direct the transfer of the 504 loan to another CDC; or cancel its guarantee of the Debenture, prior to sale, if the CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization. For the reasons stated above, SBA proposed to remove the reference to the loan Authorization, and SBA is moving forward with the rule as proposed.

Section 120.971 – Allowable fees paid by Borrower.

Section 120.971 states the requirements for the allowable fees that a 504 Loan Program Certified Development Company (CDC) may charge the Borrower in connection with a 504 loan and Debenture. Section 120.971(a)(1) describes the Processing fee and states at what point in the processing of 504 loan a fee is earned and may be collected by the CDC as the time Authorization is issued. For the reasons stated above, SBA proposed to remove the reference to the Authorization for the Debenture and to instead refer to the issuance of the loan number so that the amended section 120.971(a)(1) will provide that this fee will be considered earned and collected when the loan number is issued by SBA. For the reasons stated above, SBA is moving forward with the rule as proposed.

Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C., Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

The Office of Management and Budget has determined that this rule is a “significant regulatory action” under Executive Order 12866. SBA performed a comprehensive Regulatory Impact Analysis in the proposed rule for the public’s information. SBA does not anticipate any of the changes made in this final rule will substantially change any of the assumptions necessary for the analysis. Therefore, the final Regulatory Impact Analysis is unchanged and is synopsized below. Each section begins with a core question.

A. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

SBA performed a comprehensive cost benefit analysis in the proposed rule. SBA does not anticipate any of the changes made in this final rule will substantially change any of the assumptions necessary for the analysis; therefore, the cost benefit analysis remains unchanged and is synopsized below.

1. SBLC Moratorium Recission

Access to capital is one of the primary factors indicating whether a small business will startup, grow, and survive.

SBA’s existing loan programs serve an important role in credit markets for small businesses by providing financing to businesses that do not have credit available elsewhere from conventional sources on reasonable terms. SBA believes that increasing the number of nontraditional lenders will result in the expansion of business opportunities and the creation of more jobs in underserved communities.

SBA’s CA Pilot Program, which currently expires September 30, 2024, was specifically created to increase access to capital to small businesses located in underserved markets. SBA has learned that CA Lenders are able to routinely make at least 60 percent of their loans to small businesses located in underserved markets;

therefore, SBA is onboarding more lenders to participate in 7(a) lending to increase the number of mission-based lenders that use the program. Licensing new SBLCs and Community Advantage SBLCs will provide a path for successful CA Lenders to become participants in the 7(a) Loan Program long-term. In addition, many non-traditional lenders participated in SBA's Paycheck Protection Program (PPP), which provided billions of dollars to small businesses during the economic upheaval caused by the COVID-19 pandemic. Based on the success of the PPP, removing the moratorium on licensing new SBLCs and Community Advantage SBLCs opens opportunities for more non-traditional lenders to participate in the 7(a) Loan Program, providing additional sources of capital to America's small businesses.

2. Removal of the Requirement for a Loan Authorization

SBA's current policy of requiring a separate Loan Authorization document that contains the loan terms and conditions in addition to the loan terms and conditions that the SBA Lender also submits to SBA with its guaranty application is cumbersome, outdated, and duplicative. SBA is revising its regulations to eliminate the duplication of effort and opportunity for a mismatch of information between multiple sources of the loan terms and conditions. The official source of all terms and conditions (including any modifications) under which SBA has agreed to provide a guaranty will be maintained in SBA's E-Tran system.

B. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

1. SBLC Moratorium Rescission

SBA anticipates minor additional costs or impact on the subsidy to operate the 7(a) Loan Program in the first 5 years under these proposed regulations resulting from an anticipated modest increase in 7(a) loan activity due to additional SBLCs, as newly established SBLCs take up to five years to reach the current lending activity sustained by

established SBLC license holders. SBA has confirmed that there will be no subsidy impact in FY 2024.

The existing 14 licensed SBLCs each approve an average of 125 loans per year. SBA anticipates new SBLCs will require a ramp-up period over the course of their first several years after they are licensed to reach this level of 7(a) lending activity. Over the course of the past four fiscal years, the majority of new 7(a) lenders have made between 1 and 26 7(a) loans in their first year of activity, with the average number of loans from each new 7(a) lender of less than three loans in their first year of 7(a) loan activity. Over the fiscal years 2018 through 2021, there were three new SBLC's that acquired SBLC Licenses, and those new SBLCs approved a total of 40 7(a) loans in their first years of operation, for an average of approximately 13 7(a) loans for each SBLC in their first year. Based on loan volume for other new 7(a) lenders between FY 2018 and FY 2021, SBA anticipates new SBLCs, including Community Advantage SBLCs, to make approximately eight 7(a) loans in their first year after they become fully operational because of the targeted markets of Community Advantage SBLCs. The three new SBLCs have the potential to increase 7(a) lending by the approximately 425 loans per year over the next four years.²

SBA will grandfather current CA Lenders in accordance with section 120.420(e) that participated in the CA Pilot Program to be licensed as 7(a) Community Advantage SBLCs. When SBA authorizes a Community Advantage SBLC License to a CA Lender, the CA Lender will transition from making 7(a) loans in a temporary pilot program to instead making 7(a) loans under a non-temporary license in the regular 7(a) program. This means a CA Lender transitioning to a Community Advantage SBLC will pose no

² This estimate is from the average number of 7(a) loans each year based on the 1,694 new 7(a) loans approved by all new 7(a) Lenders in the four-year period of fiscal year 2018 through fiscal year 2022

additional burden nor increase the total number of entities overseen and supervised by SBA or the cost to SBA.

SBA is authorized³ to charge a fee for conducting oversight activities, including safety and soundness examinations of SBA-Supervised Lenders. All entities applying to participate as an SBLC (including a Community Advantage SBLC) will undergo an initial safety and soundness examination at the time of application. SBA estimates the fee for completing the initial safety and soundness examination will be a minimum of \$10,000 per applicant. The fees charged by SBA for conducting oversight activities support the oversight and examination activities.

The ongoing oversight fees imposed on the new SBLCs, including Community Advantage SBLCs, will be consistent with the oversight fees for the 7(a) Loan Program published by OCRM and consistent with the oversight fees, for example, that Community Advantage SBLCs have been responsible for over the duration of the Community Advantage Pilot Program.⁴ In general, OCRM conducts safety and soundness exams on SBLCs at least once every two years. Additionally, SBA conducts targeted reviews of loan files, among other reviews, in between regularly scheduled safety and soundness exams. The total biennial cost of these risk-based exams/reviews is currently approximately \$50,000 to \$150,000 per institution, with review costs correlated to the size of the SBLC's loan portfolio. Exam/review fees are usually invoiced following a review/exam.

In addition to the review/exam fees charged, SBA charges an annual oversight fee that covers the costs of monitoring, Other Lender Oversight Activities, and Delegated Authority Reviews (the latter as applicable). SBA charges 7(a) Lenders a fee annually for

³ See section 23(a) of the Small Business Act. 15 U.S.C. 650(a), 15 U.S.C. 634(b)(6), (7), (14), and 13 CFR 120.1070.

⁴ SBA Information Notice 5000-828947, FY 2022 Updated Fee Schedule for SBA Oversight of 7(a) Lenders, March 3, 2022. (<https://www.sba.gov/document/information-notice-5000-828947-fy-2022-updated-fee-schedule-sba-oversight-7a-lenders>)

monitoring, including the quarterly off-site/monitoring reviews conducted through the Loan and Lender Monitoring System (L/LMS). SBA's annual oversight fee also includes costs related to Other Lender Oversight Activities (e.g., technical assistance and analytics, a portion of OCRM salaries for 7(a) Lender oversight activities, supervision and enforcement activities, and similar costs to support SBA's lender oversight program). In addition, the annual oversight fee includes a fee for Delegated Authority Lender Reviews, as applicable. The annual oversight fee is based on SBA's costs. The annual fee for monitoring (e.g., L/LMS and subscription services), Other Lender Oversight Activities, and Delegated Authority Reviews is assessed annually based on each 7(a) Lender's portion of the total dollar amount of 7(a) guarantees in SBA's portfolio or, as applicable, the relevant portfolio segment the activity covers. For FY 2022, the annual oversight fee ranged from \$161 to \$174 (the latter for Delegated Authority SBA Supervised Lenders) for every \$1 million in 7(a) guaranteed dollars a 7(a) Lender has outstanding (exclusive of Paycheck Protection Program (PPP) loans). For a more detailed discussion on Lender Oversight Fees, see SOP 50 53 2, Chpt. 5 (eff. Jan. 1, 2021); SBA Information Notice 5000-828947, FY 2022 Updated Fee Schedule for SBA Oversight of 7(a) Lenders, March 3, 2022. (<https://www.sba.gov/document/information-notice-5000-828947-fy-2022-updated-fee-schedule-sba-oversight-7a-lenders>) and SOP 50 10 6, Part 1, Section A, Chpt 1, Para. D. Lifting the moratorium on licensing new SBLCs and authorizing Community Advantage SBLCs will benefit the approximately 51% of small employer firms that do not have their financing needs met,⁵ either because they did not receive all the financing for which they applied, or because they did not apply due to a variety of reasons, including the belief they would be turned down.

The proposed revisions may have a negative impact to the 14 existing SBLCs by destabilizing the value of their licenses due to increased competition and issuance of new

⁵ Ibid, page 11.

SBLC Licenses. The value of SBLC Licenses may periodically fluctuate based on whether SBA is or is not accepting applications for new SBLCs and entities interested in the program must acquire existing SBLC License.

As previously stated above, the primary function of the Community Advantage Pilot Program was to waive the moratorium on issuing new SBLC licenses to lenders who would not ordinarily qualify to be a 7(a) lender. Therefore, by creating a new type of Community Advantage SBLC, SBA will ensure that all existing Community Advantage Pilot Program participants will become 7(a) lenders without an expiration date associated with their participation. The Community Advantage Pilot Program participants have been important 7(a) lenders, increasing capital to small business by originating loans consistent with 7(a) Loan Program Requirements. As a pilot, the temporary Community Advantage Program will sunset. SBA has concluded that the Community Advantage Pilot Program demonstrated its benefits. By grandfathering in all existing Community Advantage Pilot Program lenders to be Community Advantage SBLCs, the benefits of mission-oriented lenders utilizing the 7(a) loan to extend credit across the country will become a regular feature of SBA lending. Finally, by authorizing the SBA Administrator, Associate Administrator for the Office of Capital Access (AA/OCA), or a designee(s) to determine appropriate capital requirements, loan loss reserve requirements, fidelity insurance levels and create parity in oversight fees, the current Community Advantage Pilot Program participants will not experience material changes in the transition to Community Advantage SBLCs. Accordingly, the SBA pilot program spanning three different Executive Branch Administrations will sunset, with the result being an acknowledgement that these previously ineligible mission-oriented lenders will be able to participate in 7(a) lending, or may apply to become 7(a) lenders, to increase access to capital for America's small businesses.

C. What alternatives have been considered?

1. SBLC Moratorium Rescission

SBA considered leaving the regulations unchanged and relying upon the CA Pilot Program to address the needs of access to capital in underserved markets; however, the CA Pilot Program will sunset on September 30, 2024, and SBA intends for Community Advantage SBLCs to be a solution that provides greater certainty for lenders.

SBA also considered requiring Community Advantage SBLCs to meet the \$5 million capitalization requirements currently in place for all SBLC license holders; however, SBA determined many of these lending entities would be unable to qualify for SBA's program based on such a requirement.

2. Removal of the Requirement for a Loan Authorization

SBA considered leaving the requirements for the Loan Authorization intact. However, SBA Lenders struggle under the burden of the existing lengthy Loan Authorization, and they continue to request relief from this requirement. In the interest of reducing duplicative effort and making better use of existing technology and processes, SBA determined it is in the interest of SBA and SBA Lenders to revise the requirement for a Loan Authorization as proposed.

SBA also considered facilitating electronic entry of the Loan Authorization for the subject SBA loans. However, electronic entry of the Loan Authorization form would not address the duplicative effort resulting from subsequent entry in E-Tran. Therefore, this would also not be a viable alternative.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

The portions of the proposed rule on the SBLC moratorium rescission would require SBA Form 2498, “SBA Supervised Lender Assessment Plan,” to be revised to edit the requirement that an applicant to become an SBLC must include a letter from an existing SBLC evidencing intent to transfer lending authority to conform with revisions to 13 CFR 120.466. The portion of this rule on removing the requirement for a Loan Authorization is not subject to the Paperwork Reduction Act because the Loan Authorization is not an information collection. SBA will submit revisions of this form to OMB and publish notice at a later date.

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

Regulatory Flexibility Act, 5 U.S.C. 601- 612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires the agency to “prepare and make available for public comment a final regulatory analysis” which will “describe the impact of the final rule on small entities.” For the reasons stated below, SBA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Of the 182 new 7(a) Lenders onboarded since FY 2018, only four were new SBLCs that acquired an SBLC License after receiving SBA’s approval for the SBLC License transfer. SBA does not require SBLCs to provide SBA with the financial statements of the SBLC parent company, if applicable, or affiliates; therefore, SBA is not able to determine whether the SBLCs are small businesses in accordance with SBA size standards. SBA anticipates approving three SBLCs, in the full first year after this proposed rule becomes effective.

Because some SBLC applicants may be considered small businesses per size standards in 13 CFR 121.201,⁶ SBA must address the cost of preparing and submitting an SBLC application to SBA. The 2021 annual revenues (including revenues of any Parent Company) for the 13 active SBLCs (one inactive SBLC is in the process of transferring their license and their 2021 revenues were not available) range from a low of \$5.1 million

⁶ Based on the Size Standard for NAICS Code 522298, All Other Nondepository Credit Intermediation, of \$41.5 million gross revenues averaged over the last five years - 13 CFR 121.201 <https://www.ecfr.gov/current/title-13/chapter-I/part-121/subpart-A/subject-group-ECFRf12a11421b08a31/section-121.201>

to a high of \$910.8 million, with average annual revenues of \$81.3 million per SBLC. These revenues are well above the SBA small business size standard of \$41.5 million in annual revenues for the North American Industry Classification System (NAICS) industry 522298, “All Other Nondepository Credit Intermediation” average revenue threshold to be considered a “small business”, which includes revenue from affiliates such as parent companies. SBA does not require an SBLC to be a small business in order to participate as a 7(a) Lender, therefore SBA does not review the SBLC applicant for size when evaluating an SBLC application. SBA also does not collect financial information on any SBLC affiliates, which would be necessary to make a size determination for an SBLC; therefore, it is not feasible for SBA to determine if any of the SBLCs are small businesses.

Based on SBA's experience with similar data collections, an organization applying to become an SBA Supervised Lender would typically employ the services of a financial manager, an accountant, an attorney, and an administrative assistant when preparing a complete application for submission to SBA. SBA also anticipates a minor increase of additional 7(a) loan approvals each year based on the approximately three new SBLC and Community Advantage SBLC lenders per year.

The cost estimate for an SBLC applicant to complete an SBA SBLC application is based on the estimated time to complete the application multiplied by the median hourly wage by job position wages published by the U.S. Department of Labor's Bureau of Labor Statistics for 2021⁷ and increased by 100% to account for overhead benefit costs. The cost breakdown is as follows: Financial Manager (30 hours times an hourly rate of \$63.32 plus overhead and benefit costs of \$63.32 per hour = \$3,799.20); plus Accountant (10 hours times an hourly rate of \$37.14, plus overhead and benefit costs of \$37.14 per hour = \$742.80); plus Lawyers (5 hours times an hourly rate of \$61.54, plus overhead

⁷ https://www.bls.gov/oes/current/oes_nat.htm

and benefit costs of \$61.54 per hour = \$615.40); plus Administrative Assistant (5 hours times an hourly rate of \$19.08, plus overhead and benefit costs of \$19.08 per hour = \$190.80); for a total anticipated cost to complete the SBLC application for each SBLC applicant of \$5,348. As stated elsewhere, SBA estimates the fee for completing the initial safety and soundness examination will be a minimum of \$10,000 per applicant, which would increase the cost burden for each of the three SBLC applicants to \$15,348.

SBA believes the one-time estimated cost burden of \$15,348 does not represent a significant economic impact to a potential SBLC applicant in comparison to the average annual revenue of existing SBLCs of \$81.3 million per SBLC.

List of Subjects

13 CFR Part 120

Community development, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR part 120 as follows:

PART 120--BUSINESS LOANS

1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, 697, 697a and e, and note; Pub. L. 116-260, 134 Stat. 1182.

2. Amend § 120.10 by:

a. Removing the definition for “Authorization”;

b. Adding a definition for “Community Advantage Small Business Lending Company (COMMUNITY ADVANTAGE SBLC)” in alphabetical order; and

c. Revising the definitions for “Loan Instruments”, “Loan Program Requirements or SBA Loan Program requirements” and “Small Business Lending Company (SBLC)”.

The revisions and addition read as follows:

§ 120.10 Definitions

* * * * *

Community Advantage Small Business Lending Company (Community Advantage SBLC) is a type of SBLC that is a nonprofit lending institution licensed and authorized by SBA to make loans pursuant to section 7(a) of the Small Business Act. Note: This includes former Community Advantage Pilot Lenders that were grandfathered in at the time Community Advantage SBLC licenses were authorized regardless of their profit or nonprofit status. SBA accepts applications for Community Advantage SBLCs from time to time as published in the *Federal Register*.

* * * * *

Loan Instruments are the note, instruments of hypothecation, and all other agreements and documents related to a loan.

Loan Program Requirements or SBA Loan Program Requirements are requirements imposed upon Lenders, CDCs, or Intermediaries by statute; SBA and applicable government-wide regulations; any agreement the Lender, CDC, or Intermediary has executed with SBA or to which the Lender or CDC is subject; SBA Standard Operating Procedures (SOPs); *Federal Register* notices; and official SBA notices and forms applicable to the 7(a) Loan Program, 504 Loan Program or Microloan Program, as such requirements are issued and revised by SBA from time to time. For CDCs, this term also includes requirements imposed by Debentures, as that term is defined in § 120.802. For Intermediaries, this term also includes requirements imposed by promissory notes, collateral documents, and grant agreements.

* * * * *

Small Business Lending Company (SBLC) is a non-depository lending institution that is SBA-licensed and is authorized by SBA to make loans pursuant to section 7(a) of

the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBA accepts applications for SBLCs from time to time as published in the *Federal Register*.

* * * * *

§ 120.120 [Amended]

3. Amend § 120.120 introductory text by removing the last sentence.

§ 120.192 [Amended]

4. Amend § 120.192 by removing the last sentence.

5. Amend § 120.220 by revising the last sentence of the introductory text and the last sentence of paragraph (e) to read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations or the guaranty agreement or other loan documents.

* * * * *

(e) * * * Acceptance of the guarantee fee by SBA shall not waive any right of SBA arising from the Lender's misconduct or violation of any provision of this part, the guarantee agreement or other loan documents.

* * * * *

6. Amend § 120.466 by revising paragraph (a)(6) to read as follows:

§ 120.466 SBA Supervised Lender application.

* * * * *

(a) * * *

(6) In connection with any application to acquire an existing SBLC License, the applicant must include a letter agreement signed by an authorized official of the SBLC whose License is to be acquired certifying that the SBLC is seeking to transfer its SBA lending authority to the applicant;

* * * * *

7. Amend § 120.470 by revising the introductory text, paragraph (a) introductory text, and paragraphs (b) and (e) to read as follows:

§ 120.470 What are SBA's additional requirements for SBLCs?

In addition to complying with SBA's requirements for SBA Lenders and SBA Supervised Lenders, an SBLC (including a Community Advantage SBLC) must meet the requirements contained in this regulation and the SBLC regulations that follow.

(a) *Lending.* An SBLC or Community Advantage SBLC may make:

* * * * *

(b) *Business structure.* An SBLC must be a corporation (profit or nonprofit) or a limited liability company or limited partnership, except for a Community Advantage SBLC, which must either be a nonprofit corporation or have been a Community Advantage Pilot Program participant.

* * * * *

(e) *Fidelity insurance.* An SBLC, except for a Community Advantage SBLC, must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of \$2,000,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304-9308. SBA's Administrator, in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s), at their discretion, will determine the appropriate bond coverage levels for Community Advantage SBLCs as published in Loan Program Requirements.

8. Amend § 120.471 by adding paragraphs (a)(4) and (5) to read as follows:

‘§ 120.471 What are the minimum capital requirements for SBLCs?

(a) * * *

(4) A Community Advantage SBLC must maintain a minimum amount of capital as determined at the discretion of the Administrator in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s). The minimum capital amount as published in Loan Program Requirements will ensure sufficient risk protection for SBA and lenders while not burdening smaller lenders with large capital requirements.

(5) Community Advantage SBLCs must maintain a loan loss reserve account as determined at the discretion of the Administrator in consultation with SBA's Associate Administrator for the Office of Capital Access (AA/OCA), or their designee(s) as published in Loan Program Requirements.

* * * * *

9. Amend § 120.801 by revising the last sentence of paragraph (a) to read as follows:

§ 120.801 How a 504 Project is financed.

(a) * * * SBA issues a loan number if it agrees to guarantee part of the funding for a Project.

* * * * *

10. Amend § 120.820 by adding paragraph (g) to read as follows:

§ 120.820 CDC Affiliation.

* * * * *

(g) Notwithstanding paragraphs (b), (c), and (e) of this section, a CDC may be affiliated with a Community Advantage SBLC. Additionally, CDCs that are also Community Advantage Pilot Program Lenders as of [INSERT DATE 29 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] may be licensed as Community Advantage SBLCs.

11. Amend § 120.842 by revising the last sentence of paragraph (b)(4) and the last sentence of paragraph (b)(5) to read as follows:

§ 120.842 ALP Express Loans.

* * * * *

(b) * * *

(4) * * * If approved, SBA will notify the ALP CDC of the loan number assigned to the loan.

(5) * * * After receiving notification of the loan number from SBA, the ALP CDC is responsible for properly undertaking all actions necessary to close the ALP Express Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960, and in compliance with all applicable Loan Program Requirements.

* * * * *

§ 120.921 [Amended]

12. Amend § 120.921 by removing the last sentence in paragraph (a).

13. Amend § 120.960 by revising paragraph (c)(1) to read as follows:

§ 120.960 Responsibility for closing.

* * * * *

(c) * * *

(1) The CDC has failed to comply materially with any Loan Program Requirement as defined in § 120.10;

* * * * *

14. Amend § 120.971 by revising paragraph (a)(1) to read as follows:

§ 120.971 Allowable fees paid by Borrower.

(a) * * *

(1) *Processing fee.* The CDC may charge up to 1.5 percent of the net Debenture proceeds to process the financing. Two-thirds of this fee will be considered earned and may be collected by the CDC when the loan number is issued by SBA. The portion of the processing fee paid by the Borrower may be reimbursed from the Debenture proceeds;

Isabella Casillas Guzman,
Administrator.

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